



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9711-3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by National Parks Conservation Association, Montana Environmental Information Center, Grand Canyon Trust, San Juan Citizens Alliance, Our Children's Earth Foundation, Plains Justice, Powder River Basin Resource Council, Sierra Club, and Environmental Defense Fund (collectively “Plaintiffs”) in the United States District Court for the District of Columbia:

National Parks Conservation Association, et al. v. Jackson, No. 1:11-cv-1548 (D.D.C.).

Plaintiffs filed a complaint alleging that EPA failed to promulgate regional haze federal implementation plans (FIPs) or approve regional haze state implementation plans (SIPs) for various states, including Florida, as required by section 110(c) of the CAA. The complaint further alleged that EPA had also failed to act on ten regional haze SIP submissions, as required by section 110(k) of the CAA. On March 30, 2012, the Court entered a partial consent decree resolving all claims asserted by Plaintiffs, except those with respect to Florida. The proposed consent decree establishes proposed and final promulgation deadlines for EPA to meet its obligations with respect to Florida to resolve Plaintiffs’ remaining claims.

DATES: Written comments on the proposed consent decree must be received by [insert date 30 days after publication date].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2012-0617, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5571; fax number (202) 564-5603; email address: anderson.lea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree.

Under section 110(c) of the CAA, EPA has a mandatory duty to promulgate a federal implementation plan ("FIP") within two years of a finding that a state has failed to make a required state implementation plan ("SIP") submittal. EPA is not required to promulgate a FIP, however, if the state submits the required SIP and EPA approves the plan within the two years of EPA's finding. On January 15, 2009, EPA found that 37 states, the District of Columbia, and the U.S. Virgin Islands had failed to submit CAA SIPs for improving visibility in mandatory Federal

Class I areas. 74 Fed. Reg. 2392. Plaintiffs filed a complaint in 2011 pursuant to CAA section 304(a)(2), 42 U.S.C. 7604(a)(2), alleging, *inter alia*, failure by the Administrator to promulgate regional haze FIPs or approve regional haze SIPs for 34 states within two years of its January 15, 2009 finding, as required by section 110(c) of the CAA.

EPA published notice of a proposed consent decree to resolve the deadline suit filed by Plaintiffs, requesting comment in accordance with section 113(g) of the CAA. 76 Fed. Reg. 75544 (Dec. 2, 2011). Following its review of the comments, EPA concluded that it would be inappropriate to move forward with the consent decree as it applied to Florida, and EPA withdrew its consent to the provisions of the consent decree establishing deadlines for action with respect to Florida. As a result, in March 2012, the Court entered a partial consent decree resolving all Plaintiffs' claims, except those with respect to Florida. EPA is requesting comment today on a new proposed consent that addresses the Agency's failure to promulgate a regional haze FIP or approve a regional haze SIP for Florida within two years of its finding that Florida had failed to submit a plan by the December 17, 2007 deadline.

The proposed consent decree would resolve the remaining claims by Plaintiffs in National Parks Conservation Association, et al. v. Jackson, No. 1:11-cv-1548 (D.D.C.). EPA recently proposed action on certain revisions to the Florida SIP addressing regional haze. 77 Fed. Reg. 31240 (May 25, 2012). The proposed consent decree requires EPA to sign for publication in the Federal Register by November 15, 2012, a notice(s) of final rulemaking taking action on the matters addressed in the May 25, 2012 notice of proposed rulemaking. The proposed consent decree also establishes proposed and final promulgation deadlines of December 3, 2012, and July 13, 2013, respectively, for EPA to approve a SIP or promulgate a FIP that will meet all remaining regional haze requirements for Florida. The proposed consent

decree further requires that within ten business days of signing a proposed or final rulemaking, EPA will deliver the notice to the Office of the Federal Register and will provide a copy of the notice to Plaintiffs within five business days. After EPA fulfills its obligations under the proposed consent decree, EPA may move to have this decree terminated.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree.

A. How Can I Get A Copy Of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2012-0617) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing

of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any

identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 27, 2012.

Lorie J. Schmidt,
Associate General Counsel.